

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

JIMMIE LEWIS BROWN §  
v. § CIVIL ACTION NO. 6:07cv272  
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Jimmie Lewis Brown, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Brown was convicted of sexual assault in the 4th Judicial District Court of Rusk County, Texas, receiving a sentence of 50 years in prison. He raised issues of collateral estoppel, violation of the rule regarding sequestration of witnesses, violation of the presumption of innocence through the use by the prosecutor of the term “victim,” and ineffective assistance of counsel. The Magistrate Judge ordered the Respondent to answer, and Brown filed a response to the answer. The Magistrate Judge also received copies of the state court records.

After review of the petition, the Magistrate Judge issued a Report on March 13, 2008, recommending that the petition be dismissed. Brown did not file objections to this Report; instead, he filed a notice of appeal of the Report. This notice did not set out any specific challenges to the proposed findings or conclusions of the Magistrate Judge, and so cannot be construed as objections to the Report.

Because Brown did not file objections to the Report, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Respondent's motion for substitution of counsel (docket no. 13) is GRANTED. It is further

ORDERED that the Petitioner Jimmie Brown is hereby DENIED a certificate of appealability as to the notice of appeal filed April 10, 2008 (docket no. 15) because the Report of the Magistrate Judge is not an appealable order. Trufant v. Autocon, Inc., 729 F.2d 308, 309 (5th Cir. 1984). Finally, it is

ORDERED that any and all other motions which may be pending in this action are hereby DENIED.

**So ORDERED and SIGNED this 2nd day of May, 2008.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**